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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,564	01/25/2001	Franklyn H. Story	10205.028	4127

7590 12/27/2005  
Paul F. Wille  
6407 East Clinton Street  
Scottsdale, AZ 85254

EXAMINER

SINGH, RAMNANDAN P

ART UNIT	PAPER NUMBER
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2646

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/769,564

Applicant(s)

STORY ET AL.

Examiner

Ramnandan Singh

Art Unit

2646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 6-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>Jan. 25, 2001</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed on Sep. 29, 2005 have been fully considered but they are not persuasive.

Applicant's argument—"Claims 1-5 recite "delaying the portion of the audio signal in at least one band by less than fifty milliseconds to produce a shadow signal". The McCalmont patent discloses "For normal speech, these time constants are typically in the range of about 50 to 150 milliseconds and the delay is accordingly selected to be within this range." There is no anticipation" on page 5.

Examiner's response—Examiner respectfully disagrees. McCalmont uses the typical range that include "about 50 milliseconds". The term "about 50 milliseconds" means within the range of 45 to 55 milliseconds. As a result, the McCalmont's "range of about 50 to 150 milliseconds" encompasses "less than fifty milliseconds" as claimed in claim 1. Therefore, Examiner asserts that McCalmont anticipates all the limitations of claims 1-5. Thus, claims 1-5 stand rejected.

### 2. **Status of Claims**

Claim 16 is cancelled.

Claims 6-15 are withdrawn by Applicant.

Claims 1-5 are pending.

***Double Patenting***

3. With the cancellation of claim 16, the double-patenting rejection is withdrawn.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by McCalmont [US 4,195,202].

Regarding claim 1, McCalmont teaches a method for transferring data over a telephone line during a conversation, the method comprising the steps of:

dividing an audio signal into a plurality of bands;

delaying the portion of the audio signal in at least one band by less than fifty milliseconds to produce a shadow (i.e. delay) signal; and

combining the shadow signal with the portion of the audio signal; and combining the portions to produce a reconstructed audio signal;

wherein the delay represents the data to be transferred [Figs. 1-5; col. 2, line 63 to col. 3, line 48; col. 4, line 60 to col. 6, line 36; Abstract].

Regarding claim 2, McCalmont further teaches the method wherein the presence or absence of a shadow signal represents data, such as cadence [col. 3, lines 9-17; Abstract].

Regarding claim 3, McCalmont further teaches the method wherein at least two shadow signals are produced and the data is represented by two of the shadow signals [col. 7, lines 50-68].

Regarding claim 4, the limitation is shown above.

Regarding claim 5, McCalmont further teaches the method wherein the amount of delay of a portion in a band does not equal the period of a frequency within that band [col. 7, lines 59-65].

### ***Conclusion***

- 6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramnandan Singh whose telephone number is (571) 272-7529. The examiner can normally be reached on M-TH (8:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ramnandan Singh  
Examiner  
Art Unit 2646



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SUPERVISORY PATENT EXAMINER